



**Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** B.L.I. Construction Company, Inc.

**File:** B-239246.2

**Date:** July 30, 1990

Hubert J. Bell, Jr., Esq., and John E. Menechino, Jr., Esq., Smith, Currie & Hancock, for the protester.  
Robert C. Port, Esq., Weisz & Associates, for Winter Construction Company, an interested party.  
James T. Harrell, Department of Justice, for the agency.  
Catherine M. Evans, David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Where contracting officer, due to prison security arrangements, collected bids after announcing bid opening time, it was implicit that bid submission would continue until all bids were submitted; allowing one bidder to modify bid to incorporate envelope modification after bid initially had been presented to contracting officer merely delayed conclusion of bid submission process and did not render bid late when it finally was submitted after modification was completed.

### DECISION

B.L.I. Construction Company, Inc. protests the award of a contract to Batson-Cook of Atlanta, Inc. under invitation for bids (IFB) No. 131-9829, issued by the Federal Bureau of Prisons, Department of Justice, for renovation of the U.S. Penitentiary in Atlanta, Georgia. B.L.I. alleges that Batson-Cook's bid was late and therefore should not have been accepted for award.

We deny the protest.

Bid opening was scheduled for 2 p.m. on April 5, 1990, in the Warden's Conference Room at the U.S. Penitentiary in Atlanta. Shortly before 2 p.m., the contracting officer entered the reception area, where all five bidders were waiting, and proceeded to escort the bidders to the sallyport entrance to the prison en route to the conference

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room, where bids were to be opened. Each bidder had to be cleared by security at the sallyport; as a result of recent changes in security procedures, this process took until 2 p.m. At that point, the contracting officer announced the time and advised all bidders to hand in their bids as they passed through the sallyport. As the Batson-Cook representative, who was last in line, handed his bid to the contracting officer, he pointed out a notation on the outside of the bid envelope which read "Deduct \$17,000 from bid." The contracting officer informed the Batson-Cook representative that modifications written on the outside of bid envelopes were unacceptable, and instructed the representative to make the change on the bid schedule. The contracting officer handed the envelope back to the representative and watched as he opened the envelope, reduced the total amount of the bid on the bid schedule by \$17,000, and resealed the bid. Batson-Cook's representative then handed the envelope back to the contracting officer, and the group proceeded to the conference room for bid opening. When the bids were opened, Batson-Cook's modified bid was low by \$40,000.

In its protest, B.L.I. argues that Batson-Cook's bid should be rejected as late because it was returned to the bidder, changed, and resubmitted after the time for bid opening. We disagree.

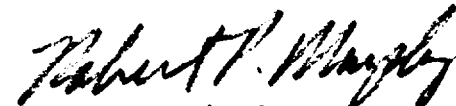
As a result of recent changes in security procedures, bidders were unable to reach the Warden's Conference Room, the place for delivery of bids, and the contracting officer had not yet collected the bids by 2 p.m., the time set for bid opening. The contracting officer then actually collected the bids after announcing the time. We do not view Batson-Cook's final submission of its bid to have been late since, by his actions, the contracting officer indicated to the five bidders present that the time for bid opening would not be deemed to have passed until the bids of all those present had been collected. Thus, the contracting officer's observation regarding Batson-Cook's bid; his returning the bid with instructions; and the firm's delaying submission until it had complied with the contracting officer's instructions merely delayed the conclusion of the acceptance of bids. Hi-Grade Logging, Inc., B-222230, B-222231, June 3, 1986, 86-1 CPD ¶ 514.

Even if the modification of the bid schedule by Batson-Cook's representative were viewed as having been made after the time for bid opening, the bid as reduced would be acceptable under the circumstances. The modification was made in the contracting officer's presence, with the contracting officer assuring that no other changes were made

to the bid schedule; in effect, the contracting officer never relinquished control of the bid after it was initially submitted. Since Batson-Cook's original bid was already low, a subsequent untimely modification reducing the bid by \$17,000 could be accepted under Federal Acquisition Regulation § 52.214-7(f), as "a late modification of an otherwise successful bid which makes its terms more favorable to the Government."

Accordingly, no matter how bid opening is viewed, Batson-Cook's modified bid properly was accepted.

The protest is denied.

  
for James F. Hinchman  
General Counsel